IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kundan @ Kunana Ram & Anr. Versus State of Rajasthan.

S.B. Criminal Revision Petition No.1069/2006

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Date of Order: August 17, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. R.S. Choudhary, for the petitioner.
Mr. JPS Choudhary, Public Prosecutor for the State.

BY THE COURT:

This criminal revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the judgment and order dated 31-10-2006 passed by the Additional Sessions Judge, Ratangarh, district Churu (for short, "the Appellate Court" hereinafter) in Criminal Appeals No.25/2006 and 30/2006, whereby the appeals filed by the petitioners against the judgment and order dated 15-7-2006 passed by the Additional Chief Judicial Magistrate, Ratangarh (for short, "the trial Court" hereinafter) in Criminal Case No. 327/2005 were dismissed.

Learned counsel for the petitioners submits that the revision petition itself may be finally heard and decided at the

Orders stage. With the consent of the learned counsel for the parties, the revision petition is finally heard and decided at the Orders stage.

At the very out set, learned counsel for the petitioners submits that the petitioners do not want to challenge the conviction of both the petitioners for the offences under Sections 224 and 225 (II) IPC, however he has confined his arguments only to the quantum of sentence. Learned counsel for the petitioners submits that the petitioners are in custody since 3-11-2005 and they have already undergone the imprisonment for 19 ½ months out of the sentence of three years awarded by the trial Court and affirmed by the Appellate Court and, therefore, the sentence of imprisonment awarded to the petitioners may be reduced to the period of imprisonment already undergone by them.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties; carefully gone through the record of the trial Court as also the judgments and orders of the trial Court as also the Appellate Court.

There is sufficient material on record, by which it can be said that the prosecution succeeded in proving the case against both the petitioners for the offences notice above beyond reasonable doubt and, therefore, learned counsel for the

petitioners is right in not challenging the conviction of both the petitioners for the aforesaid offences.

From the record, it appears that the petitioners have been in custody since 3-11-2005 as is evidence from Form No.34, the Warrant of Commitment to Jail on a Sentence of Imprisonment, which shows that the petitioners are in the judicial custody since 3-11-2005 till today. Thus, the total period of imprisonment suffered by both the petitioners is about 19 ½ months.

It is contended by the learned counsel for the petitioners that petitioner No.1 Kundan alias Kunana Ram was in the judicial custody while facing the trial for the offence under Section 376 IPC, in which, ultimately on trial, he has been acquitted. Be that as it may, having regard to the facts and circumstances of the case and the fact that both the petitioners have suffered the substantial part of sentence of imprisonment awarded to them, in my view, the ends of justice would be met in reducing the substantive sentence of imprisonment to the period of imprisonment already undergone by both the petitioners.

In the result, the revision petition filed by both the petitioners against their conviction stands dismissed. However, while maintaining the sentence of fine imposed by the courts below, the substantive sentence of imprisonment is reduced to

the period of imprisonment already undergone by both the petitioners. The petitioners are in jail and they be released forthwith on depositing the amount of fine, if not required in any other case. Since the revision petition itself is finally decided, S.B. Criminal Misc. Application for Suspension of Sentence No.305/2006 also stands disposed of.

(H.R. PANWAR), J.

mcs